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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,635	09/26/2000	Elizabeth Sharpe	11854/1	6168
25693	7590	12/29/2003	EXAMINER	
KENYON & KENYON (SAN JOSE) 333 WEST SAN CARLOS ST. SUITE 600 SAN JOSE, CA 95110			TO, BAOQUOC N	
			ART UNIT	PAPER NUMBER
			2172	18

DATE MAILED: 12/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/670,635	SHARPE ET AL.
	Examiner Baoquoc N To	Art Unit 2172

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-27 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \*    c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Continued Prosecution Application*

1. The request filed on 11/21/03 for a Request For Continued Examination (RCE) under 37 CFR 1.53(d) based on parent Application No. 09/670635 is acceptable and a RCE has been established. An action on the RCE follows.
2. 1-27 are pending in this application.

### *Response to Arguments*

3. Applicant's arguments filed 11/21/03 have been fully considered but they are not persuasive.

Applicant argues that, "Mizoguchi does not or suggests the method and method or archiving and retrieving items based on episodic memory of groups of people, as disclosed by applicants."

In response to applicant's arguments, the recitation "the method and method or archiving and retrieving items based on episodic memory of groups of people" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Applicant argues "Mizoguchi does not teach or suggest having or utilizing predefined data which identifies the user or groups of people to which the user belongs."

The examiner respectfully disagrees with the above argument because Mizoguchi discloses a use of retrieving a list of person information when a person key is inputted (page 10, lines 19-25). Although, the applicant have directed the examiner to (Title; the specification for example page 3, 2rd full paragraph; preamble of independent claims 1, 14-15, and 17) when a user wishes to use the system, such a user name and password will enter, identifying as a member of group. Also, the item stored are associated to the group to which the user belongs. (see application, p. 12, 3<sup>rd</sup> and 4<sup>th</sup> full paragraphs)" The claims do not capture the essence of the invention as argued in applicant's remark statement. The examiner kindly submits that the applicant misread the applied reference. However, when read and analyzed in light of the specification, the invention as claimed does not support applicant arguments. Actually, the applicant is interpreting the claims very narrow without considering the broad teaching of the reference used in the rejection. Although, the claims are interpreted in light of the specification, limitation from the specification are not read into the claim, In re Van Guens 988 F.2d 1181, 26 USPQ2d 1057 (Fed.Cir 1993). It is reminded that Applicant cannot rely on the specification to impart to the claims limitations not recited therein. Such reliance is ineffective to define over the prior art. In re Lundberg, 244 F2d 543, 113 USPQ 530 (CCPA 1957); In re Winklans, 188 USPQ 129 (CCPA 1975). Applicant are further reminded of the clear difference

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between reading the claim in light of the specification as allowed by 35 U.S.C. 112, 6<sup>th</sup> paragraph, and by *In re Donaldson* 29 USPQ2rd, 1845, 16 F.3d 1189 (Fed. Cir, 1994), and reading limitations of the specification into the claims *In re Prater* 415 F2d 1393, 162 USPQ 541 (CCPA 1969). Further, the Applicants always have the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified, *In re Prater*, 162 USPQ 541, 550-51 (CCPA 1969).

The applicant also argues, "no index is created by the invention disclosed by Mizoguchi."

The examiner disagrees with the applicant argument because as previously discussed in the advisory action on 10/21/03 where the examiner explicitly explain that the 1, 2, 3, and 4 are interconnected the event, time, a person, a place and other data. This association is indexing and storing between the presentation numbers and stored data as indicates above. The functionalities of indexing and storing are included in searching and storing of digital images as taught in Mizoguchi.

Applicant also argue in claim 2 and 18 that, "Mizoguchi does not teach or suggest a user is identified within group."

The examiner respectfully disagrees with the above argument because Mizoguchi states "when one of the "person" key, "place" key, and "other data" key in the upper right portion 7b is operated, a list of person information, place

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information, and other information stored as the associated data of the image data in the memory card MC are displayed in accordance with the operated search key" (col. 10, lines 21-25). This clearly indicates that a user for example Yoshida inputs (col. 9, lines 4-5) and the list of people is displayed. This means Yoshida is the person of this particular group.

As to claims 4 and 20, the applicant also argues "Mizoguchi does not generate indexing information or any form index."

The examiner directed the applicant to the above argument of claims 1, 14-15 and 17.

As to claims 5 and 21, the applicant argues "there is no indication, teaching or suggestion by Mizoguchi of a memorable highpoint a given event, data or group of people as disclosed by Applicants."

The examiner respectfully disagrees with the above argument. Such "high point" the applicant relied upon is the importance of date/time. For example, all the images of golf are search with the high point of time is "1993/01/22/08/00-1993/01/22/1700." (Col. 9, lines 51-57 and col. 10, lines 14-17). The high point is the time the golf occurred.

As to claims 6 and 22, the applicant argues "Mizoguchi does not teach or suggest of a memorable high point."

The examiner respectfully disagrees with the above argument. Applicant should duly note that the claim was not explicitly defined what exactly memorable high point. It is clearly submitted that the high point the examiner is preferred to

the time of the event occurred. For example, the golf event which occurred is the point of time between "1993/01/22/08/00-1993/01/22/00" (col. 9, lines 51-57).

As to claims 7 and 23, the applicant argues "Mizoguchi does not teach or suggest of an identification of the media type of the media item."

The examiner respectfully disagrees with the above argument. Mizoguchi, however, discloses in the step S5, an event "golf" is added as data associated with the image (col. 8, lines 38-40). This clearly indicates the image is the media type and the golf is an identification of the image.

As the claims 8 and 24, the applicant argues "Mizoguchi does not teach or suggest that form a user's input for a plurality of digital media items, the user is associated with the identified digital media items."

The examiner respectfully with the above argument. Mizoguchi clearly states "a name of person (in this case, "Yoshida") is input, it can be recorded as associated data." (col. 9, lines 2-11). In addition, Mizoguchi also states "when one of the "person" key, "place" key, and "other data" key in the upper right portion 7b operated, a list of person information, place information, and other information stored as the associated data of the image data.." (col. 10, lines 19-25). When a user for example Yoshida is being inputted, Yoshida is referencing to a particular image or images that Yoshida participates.

As to claims 9 and 25, the applicant argues "Mizoguchi does not generate indexing information or any form of indexes."

Please see the above argument for claims 1, 14-15 and 17.

As to claim 12, the applicant argues "applicant respectfully submit that applicant respectfully submit that applicant's disclosed invention does not relate to the synchronization of video and audio frames, or the retrieval of time dependent data, as described in Batson."

The examiner respectfully disagrees with the above argument. Mizoguchi discloses the storing and searching images based on the event, people and time period. The missing teaching of Mizoguchi is the claimed notification to the user when the data is available. Batson teaching is the media retrieval system, which allows implementing the notification the user the availability of the data (col. 8, lines 41-51). Such modification would increase the system flexibility and enhance the user requirements.

4. Please see the rejection for all claims in the office action dated on 05/22/03.

#### *Conclusion*

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Contact Information***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Baoquoc N. To whose telephone number is (703) 305-1949 or via e-mail BaoquocN.To@uspto.gov. The examiner can normally be reached on Monday-Friday: 8:00 AM – 4:30 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached at (703) 305-9790.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231.

The fax numbers for the organization where this application or proceeding is assigned are as follow:

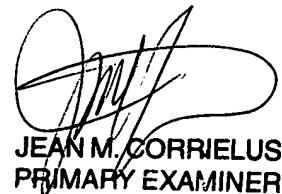
(703) 872-9306 [Official Communication]

Hand-delivered responses should be brought to:

Crystal Park II  
2121 Crystal Drive  
Arlington, VA 22202  
Fourth Floor (Receptionist).

Baoquoc N. To

Dec 18, 2003



JEAN M. CORRIELUS  
PRIMARY EXAMINER